87-37

Case No.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1986

MARGUERITE EADES, Petitioner,

vs.

DONALD J. STERLINSKE, BRADLEY W. HUFF, and JULIE EWALD, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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April 29, 1987

QUESTIONS PRESENTED

1. Whether the preparation and filing of a fabricated record of a jury instruction conference never held in a criminal proceeding by a judge without notice to the criminal defendant are nonjudicial acts unprotected by judicial immunity?

2. Whether the spinning of a clerk's date stamp to fraudulently back date a fabricated record, alteration of the transcript and the clerk's docket sheet to conceal the entry of the fabricated record from the criminal defendant are nonjudicial acts unprotected by judicial immunity?

3. Whether the ministerial acts of a court reporter and court clerk not pursuant to any court order assisting a judge in the preparation, filing and concealment of a fabricated record of a

jury instruction conference never held are unprotected by judicial immunity?

TABLE OF CONTENTS

TABLE OF CONTENTS
OF APPENDIX TO PETITION

TABLE OF AUTHORITIES

UNITED STATES CODES

WISCONSIN STATUTES

Case No.
IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1986

MARGUERITE EADES, Petitioner,

vs.

DONALD J. STERLINSKE, BRADLEY W. HUFF, and JULIE EWALD, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, Marguerite Eades, hereby prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit in this matter and in support thereof states the following:

DECISIONS BELOW

The opinions of the District Court appear in the Appendix at A7-A25. The opinion of the Court of Appeals, reported

at 810 F.2d 723 (7th Cir. 1987), appears in the Appendix at A2-A6.

STATEMENT OF JURISDICTION

Jurisdiction of the District Court is established by 28 U.S.C. § 1343 in that the present action was sought for violation of petitioner's constitutional rights pursuant to 42 U.S.C. § 1983. Jurisdiction of the Court of Appeals is established by 28 U.S.C. § 1291. The judgment of the Court of Appeals (No. 86-1884) was issued on January 30, 1987. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The present action arises from the deprivation of constitutional rights to liberty, effective assistance of counsel, and a fair trial in a criminal proceeding. The petitioner and plaintiff in the present case, Marguerite Eades,

was the defendant in the criminal proceeding and was imprisoned for nine months as a result of the unconstitutional acts of defendants. The respondents and defendants in the present case are the former judge[1], Donald Sterlinske, the judge's clerk, Julie Ewald, and the court reporter, Bradley Huff, for the criminal proceeding.

The unconstitutional actions by the respondents, a former judge, a clerk and a court reporter, were the fabrication of a portion of a criminal trial record and alteration of the transcript and record to conceal the fabrication from the petitioner.

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[1]Donald Sterlinske is not presently judge for Rusk County, Wisconsin, having resigned his position as judge in midst of proceedings before the Wisconsin (Footnote Continued)

Petitioner Eades was criminally charged with two counts of welfare fraud on June 16, 1980. The charges were brought in the Circuit Court for Rusk County, Wisconsin. In October, 1980, a jury trial was held on the two criminal charges. No jury instruction and verdict conference was held during the trial. Eades was convicted.

After the trial, petitioner changed attorneys. The new attorney representing petitioner Eades requested a trial transcript in order to file post-conviction motions. After the request for a transcript, Sterlinske called the court reporter, Huff, into his office and dictated a "certificate."

(Footnote Continued)
Judicial Commission which arose in part from the events of the present case.

This was done without notice to the petitioner or new counsel. The "certificate" provided in relevant part:

> I, D. J. Sterlinske, presiding Judge in the criminal matter of State of Wisconsin vs. Marguerite Eades, Case No. 80 CR 82, hereby certifies [sic] that upon the closing of the testimony and prior to the closing arguments of counsel a conference was held in chambers between the Court and counsel, and it was stipulated that there was no objection by counsel as to the verdicts submitted, and there was no objection as to the proposed instructions, and it was stipulated and agreed that the written jury instructions would not be given to the jury.

The "certificate" materially fabricated the record. The "certificate" represented that a complete instruction and verdict conference was held when no such conference had, in fact, been held. Sterlinske directed Huff to back date the "certificate" as of the date of the trial, although this is not the date it

was prepared and signed. Sterlinske also directed Huff to falsely alter the transcript to be consistent with the false certificate.

After January 29, 1981, Sterlinske caused Huff to rotate the date stamp on the Clerk of Court's filing stamp backwards to stamp the "certificate" as filed on October 23, 1980, the trial date. Sterlinske then caused the "certificate" to be placed in the court file, as if it had been filed on October 23, 1980, when it was actually prepared and filed several months later. At the same time, Sterlinske directed his clerk, respondent Ewald, to alter the docket sheet kept by the Clerk of Court to indicate the "certificate" had been filed on October 23, 1980.

These alterations of the criminal trial record were all conducted without

notice to petitioner Eades or her counsel. There was no order entered by Sterlinske requiring the alteration of the record. The respondents knew that the certificate was false and knew that its creation and insertion into the record was fraudulent and for the purpose of misleading Eades and her new counsel about the proceedings at trial.

Relying upon the altered record, Sterlinske attempted to dissuade the new counsel from making post-conviction motions. Sterlinske later relied on the fictitious instruction conference to deny post-conviction motions. Sterlinske then sentenced Eades to two years in prison. Eades served nine months in prison.

Petitioner Eades brought the present action against the respondents for their participation in a scheme which fabricated and falsely altered a criminal

trial record and transcript. The fabrication and alteration of the record without notice to petitioner Eades or her counsel was a deprivation of petitioner's constitutional rights to liberty, due process, and effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments.

The respondents moved to dismiss the action. The District Court, although finding the conduct "shocking" and "disgusting," granted the motions to dismiss holding that all respondents were entitled to absolute judicial immunity and entered judgment dismissing the action in its entirety. The Court of Appeals, although finding the conduct "reprehensible," affirmed the judgment of the District Court as to all respondents. Whereupon, the petitioner filed a Petition for Writ of Certiorari to the

United States Court of Appeals for the Seventh Circuit.

REASONS FOR GRANTING THE WRIT

I. INTRODUCTION.

There can be no dispute that the conduct in the present case is "reprehensible."[2] The conduct by respondents cannot be countenanced in any system of justice which guarantees due process. Chessman v. Teets, 350 U.S. 3, 4, 76 S. Ct. 34, 100 L. Ed. 2d (1955) (fraudulent alteration of transcript held to be a denial of due process). Despite the substantial constitutional abuses by

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[2]Although the activities of the respondents in the present case clearly constitute felonious conduct pursuant to Wis. Stat. sec. 946.72(1) (tampering with public records), for reasons known only to the Attorney General of the State of Wisconsin, the respondents have never been criminally prosecuted.

respondents and notwithstanding petitioner's imprisonment for nine months, respondents were held to be shielded by the judicial cloak of immunity. Therefore, petitioner is without any redress for the "reprehensible," "disgusting," and "shocking" abuse of her fundamental constitutional rights.

This Court should grant the Writ not merely to cure this incredible injustice, but also to define the appropriate limitations of the shield of immunity for acts which are conducted by one who wears a judicial cloak. Review is particularly warranted in the present case where the decision of the Court of Appeals essentially abrogates the second criteria established by Stump v. Sparkman, 435 U.S. 349, 361-62, 55 L. Ed. 2d 331,

98 S. Ct. 1099 (1978), the requirement that the conduct be a judicial act.

Related to the scope of the "judicial act" requirement is the question whether absolute judicial immunity extends to court administrative personnel, such as court reporters and clerks when performing ministerial duties not pursuant to any court order. There is no Supreme Court decision on whether and under what circumstances judicial immunity applies to court reporters and clerks.

The resolution of these issues by the Supreme Court at this time is necessary. Since the lower court's decision essentially merges the "judicial act" requirement into the requirement that the judge be acting in a proceeding within the scope of the judge's jurisdiction, it is contrary both to

Stump and to other decisions of courts of appeals relying upon the "judicial act" requirement. King v. Love, 766 F.2d 962, 968 (6th Cir.), cert. denied, ____ U.S. ____, 106 S. Ct. 351, 88 L. Ed. 2d 320 (1985) (misrepresentation about identity of person sought pursuant to a warrant); Brewer v. Blackwell, 692 F.2d 387, 396-97 (5th Cir. 1982) (pursuit and arrest); Gregory v. Thompson, 500 F.2d 59, 64 (9th Cir. 1974), (physical assault of a litigant) cited with approval in Stump, 435 U.S. at 361 n.10. See also Lopez v. Vanderwater, 620 F.2d 1229, 1235 (7th Cir.), cert. dismissed, 449 U.S. 1028 (1980) (judge acting as a prosecutor); Harris v. Harvey, 605 F.2d 330, 336 (7th Cir. 1979) (public statements by a judge).

The reasoning which essentially abrogated the "judicial act" requirement

also led the Court of Appeals to the erroneous conclusion that administrative personnel such as clerks and court reporters are entitled to absolute judicial immunity so long as the unconstitutional conduct breaching their ministerial duties involved discretion. This too, is contrary to other decisions by courts of appeals which have held clerks and court reporters are entitled only to qualified immunity. Holt v. Dunn, 741 F.2d 169, 170 (8th Cir. 1984); Green v. Maraio, 722 F.2d 1013, 1018-19 (2d Cir. 1983); Rheuark v. Shaw, 628 F.2d 297, 305 (5th Cir. 1980), cert. denied, 450 U.S. 931 (1981); Slavin v. Curry, 574 F.2d 1256, 1265-66 (5th Cir. 1978); McLallen v. Henderson, 492 F.2d 1298, 1299 (8th Cir. 1974). See also Lowe v. Letsinger, 772 F.2d 308, 312 (7th Cir. 1985).

A Supreme Court decision is necessary to clearly delineate the scope of the "judicial act" requirement and to clarify the application of both judicial immunity and the "judicial act" requirement to judges, clerks and court reporters. Therefore, in the interest of judicial economy and in clarification of the application and scope of the judicial immunity doctrine, as well as correcting an egregious injustice, this Court should grant certiorari to resolve these issues.

II. THE DECISION BY THE COURT OF APPEALS ESSENTIALLY ABROGATES THE JUDICIAL ACT REQUIREMENT CONTRARY TO PRIOR DECISIONS OF THIS COURT AND OTHER CIRCUITS WHERE THE FABRICATION AND FRAUDULENT ALTERATION OF PART OF A CRIMINAL TRIAL RECORD WITHOUT NOTICE OR ORDER, INCLUDING THE ACT OF SPINNING A DATE STAMP BACKWARD TO FRAUDULENTLY BACK DATE A FABRICATED RECORD ARE NONJUDICIAL ACTS.

Judges for courts of general or superior jurisdiction enjoy absolute

immunity for judicial acts, unless committed "in the clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 355-57, 362, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978); Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 347, 351, 20 L. Ed. 646 (1872).

The purpose of absolute judicial immunity is to preserve the judiciary's independent decision-making process. Stump, 435 U.S. at 355-56; Pierson v. Ray, 386 U.S. 547, 554, 18 L. Ed. 2d 288, 87 S. Ct. 1213 (1967); Bradley, 80 U.S. (13 Wall.) at 347.

For judicial immunity to apply, the actions must be both judicial acts and arguably within the court's jurisdiction. Stump, 435 U.S. at 355-57, 362; Bradley, 80 U.S. (13 Wall.) at 347, 351. The issue raised by the present petition is

the scope of the "judicial act" requirement.

The Supreme Court declared in Stump:

> The relevant cases demonstrate that the factors determining whether an act by a judge is a "judicial" one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e, whether they dealt with the judge in his judicial capacity.

Stump, 435 U.S. at 362.

The Court of Appeals recognized that a separate "judicial act" requirement must be satisfied and ostensibly relied upon factors enunciated by this Court in Stump. (Ap. at A5.) A careful examination of the Court's reasoning, however, reveals that the Court actually merged the "judicial act" requirement with the jurisdiction requirement. The Court of Appeals concluded that since petitioner was a defendant in a pending

criminal matter, i.e., since the court had jurisdiction over the matter, the acts of the judge, clerk and court reporter fabricating the record, without notice and without any order, were judicial acts. This subsumes the "judicial act" requirement into the jurisdiction requirement and thus leads to the egregious error, as well as creating substantial confusion as to judicial immunity.

The critical language of the lower court's opinion is particularly revealing. After discussing the two factors necessary for an act to be judicial, normal performance by a judge and the relationship between the parties, the lower court reasoned:

> The answer to the first prong is already established. Judge Sterlinske presided over the plaintiff's criminal trial and post-trial proceedings and thus

> was performing the normal duties of a judge. Second, by virtue of her status as a defendant in criminal proceedings, Eades' relationship to the judicial system makes immunity appropriate in light of the concerns expressed in Bradley. Forrester v. White, 792 F.2d 647 (1986). The plaintiff was dealing with the judge in an official capacity since the acts involved post-trial proceedings.

(Ap. at A5; emphasis supplied.) This is the complete reasoning of the lower court that the acts were judicial.

The lower court concluded that where the circuit judge had jurisdiction, his actions fabricating the trial record, and concealing the alteration of the record from the petitioner and her attorney, all without any order were judicial acts. The decision inevitably leads to the conclusion that there really is no separate "judicial act" requirement.

Decisions in other circuits reveal a split of authority, including a split within the Seventh Circuit itself. These decisions also demonstrate the need for a viable, separate judicial act requirement, which allows relief in limited cases, while preserving the independence of the judiciary.

In Gregory, 500 F.2d at 64, a physical assault upon a litigant by a judge was held not to be protected by judicial immunity although the judge unquestionably had jurisdiction over the litigant and over his own courtroom. Significantly, Gregory was discussed as precisely the activity not protected by judicial immunity in Stump, 435 U.S. at 361 n.10. Likewise, the misrepresentation by the judge in King, 766 F.2d at 968, that the plaintiff was the individual described by a warrant was held to be a

nonjudicial act. Similarly, the pursuit, arrest and prosecution of the plaintiffs by the judges in Lopez, 620 F.2d 1235 and Brewer, 692 F.2d 396-97 were held to be nonjudicial acts. In each of these cases, the courts held that although the judge arguably had jurisdiction, the unconstitutional conduct was not judicial activity.

To the extent reasoning of the lower court in the present case was correct, all of the above cases were wrongly decided. In all of the above cases, the judges were presiding over some proceeding in which plaintiffs were participating. In all of the above cases, the parties were relating with a judge serving in a judicial capacity.

Unlike the decisions in Gregory, King, Brewer, and Lopez, the lower court made no assessment of whether the

unconstitutional acts themselves were judicial acts.

The specific unconstitutional conduct itself substantially undermines any conclusion that the acts in question are judicial. These acts are not normally performed by a judge. The respondents created a false portion of a criminal record and altered the transcript, the docket sheet, and the filing stamp to conceal the falsification. The act of spinning the a clerk's filing stamp to back date the filing of a fabricated document cannot be considered an act normally performed by a judge. Actually, the preparation, preservation, and maintenance of the transcript of proceedings and the record are duties normally performed by court reporters and clerks. See Wisconsin Statutes, secs. 59.39(2), (3) and

757.57(5) (expressly allocating these duties to court reporters and clerks).

The parties did not deal with the judge in a judicial capacity. There was no notice to petitioner or her counsel of the alteration of the record, the transcript or the docket sheet. The judge did not issue any order that the record, the transcript or the docket sheet be altered. Indeed, the substantial efforts of the judge, the clerk and the court reporter to conceal their activities from plaintiff and her counsel belie any serious assertion that these respondents were relating to petitioner in a judicial capacity.

The present case is analogous to the ministerial, nondiscretionary duties held not judicially immune in Ex Parte Virginia, 10 Otto 339, 100 U.S. 339, 348-49, 25 L. Ed. 676 (1879). The

Supreme Court held in Ex Parte Virginia that a judge was not immune for his exclusion of colored persons from a jury. The Court concluded,

> Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent. Whether he was a county judge or not is of no importance. The duty of selecting jurors might as well have been committed to a private person as to one holding the office of a judge. It often is given to county commissioners, or supervisors, or assessors. In former times, the selection was made by the sheriff. In such cases, it surely is not a judicial act, in any such sense as is contended for here. It is merely a ministerial act, as much so as the act of a sheriff holding an execution, in determining upon what piece of property he will make a levy, or the act of a roadmaster in selecting laborers to work upon the roads.

Ex Parte Virginia, 100 U.S. at 348 (emphasis supplied).

A careful analysis of the fundamental principle underlying absolute judicial immunity, judicial independence in decision-making, also supports the preservation of the "judicial act" requirement. As the present case demonstrates, judicial immunity is absolute; redress for substantial injury caused by reprehensible unconstitutional conduct is totally denied. The doctrine of judicial immunity is to be broadly construed to protect independent decision-making yet tailored to protect precisely that interest. A meaningful "judicial act" requirement is necessary to tailor the absolute immunity to preserve independent judicial decision-making without immunizing a broad range of unconstitutional activity merely because it is performed by a judicial official.

Although the lower court went to considerable effort to elaborate numerous considerations supporting judicial immunity, all of which ultimately reduce to preservation of judicial independence, it totally failed to discuss how its decision furthered any of these considerations. (Ap. at A4-A5.) The immunization of actions falsifying a transcript, fabricating a part of a criminal record, backdating a fabricated document, altering a docket sheet, all in the attempt to conceal the fabrication from petitioner and her counsel, does not further the independence of the judiciary. The lower court did not state how the immunity it fashioned furthered any of the numerous considerations it enumerated. (Ap. at A4-A5.)

The lower court's decision in the present case abrogates the "judicial act"

requirement thus causing a conflict among the circuits, great confusion as to the scope of judicial immunity and an egregious result. If the "judicial act" requirement is to have any continued validity, this Court should grant certiorari in the present case.

III. THE DECISION BY THE COURT OF APPEALS EXTENDS ABSOLUTE JUDICIAL IMMUNITY TO THE MINISTERIAL ACTIVITIES OF CLERKS AND COURT REPORTERS IN CONFLICT WITH DECISIONS OF OTHER CIRCUITS AND CONTRARY TO THE PRINCIPLES UNDERLYING JUDICIAL IMMUNITY AS ENUNCIATED BY THIS COURT.

The Supreme Court has never decided whether absolute judicial immunity applies to court reporters and clerks, and if so, under what circumstances. As previously demonstrated, there is a raging conflict among the circuits on this issue. Lowe, 772 F.2d at 312; Holt, 741 F.2d at 169; Green, 722 F.2d at 1018. Rheuark, 628 F.2d at 305; Slavin, 574

F.2d at 1265-66; McLallen, 492 F.2d at 1298. Contra Briscoe v. LaHue, 663 F.2d 713, 722 n.6 (7th Cir. 1981), aff'd on other grounds, 460 U.S. 325 (1983); Stewart v. Minnick, 409 F.2d 826 (9th Cir. 1969); Dieu v. Norton, 411 F.2d 761 (7th Cir. 1969). The application of judicial immunity to court reporters and clerks desperately needs clarification by this Court, for the sake of petitioner, respondents, and the courts.

Unfortunately, the lower court's decision only increases the confusion. Apparently, the appellate court did view the proper performance of the duties involved, preparation of a transcript, preservation and maintenance of a record, as ministerial in nature. (Ap. at A5-A6.) The court reasoned, however, distinguishing its earlier decision in Lowe, 772 F.2d at 313, that the decision

to breach the proper performance of the duties was discretionary and therefore protected by absolute immunity. This is true for every act of constitutional abuse by judicial personnel.

An act violating constitutional rights might not be an act of discretion where such act was required by court order. Although there is no court order in the present case, ironically the Court of Appeals for the Seventh Circuit has recently held that nonjudicial officials performing ministerial acts pursuant to judicial direction are protected by absolute judicial immunity. Henry v. Farmer City State Bank, 808 F.2d 1228, 1238-39 (7th Cir. 1986). Thus, absolute immunity extends to virtually all actions of judicial administrators.

The appellate court failed to evaluate the the acts in question.

Entangled in its decision concerning the former judge while realizing that the proper performance of the acts in question really did involve ministerial duties, the court had to engage in the tortured reasoning that the decision by judicial administrators to breach ministerial duties and violate petitioner's constitutional rights is protected by absolute judicial immunity.

The instant case presents the Court with the opportunity to clarify this murky area of law and avoid substantial further confusion. Accordingly, this Court should grant certiorari and resolve whether and to what extent absolute judicial immunity applies to court reporters and clerks.

CONCLUSION

The twirling of a clerk's date stamp backward to back date a fabricated

document and thereby conceal the document's fabrication from petitioner and her counsel is not a judicial act. The extension of absolute judicial immunity to clerks and court reporters has never been decided by this Court. Therefore, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

Dated this 9th day of April, 1987.

Respectfully submitted,

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APPENDIX OF THE PETITIONER, MARGUERITE EADES

INDEX TO APPENDIX

JUDGMENT - ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

January 30, 1987.

Before

Hon. WILLIAM J. BAUER, Chief Judge

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. RICHARD A. POSNER, Circuit Judge

MARGUERITE EADES,
Plaintiff-Appellant,
No. 86-1884
vs.
DONALD J. STERLINSKE, BRADLEY W. HUFF,
and JULIE EWALD,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN
No. 85 C 824
Judge John C. Shabaz

The cause was heard on the record from the United States District Court for

the Western District of Wisconsin, _____ Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this date.

In the

United States Court of Appeals

For the Seventh Circuit

No. 86-1884

MARGUERITE EADES,

Plaintiff-Appellant,

v.

DONALD J. STERLINSKE, BRADLEY W. HUFF and JULIE EWALD,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Wisconsin.
No. 85 C 824—John C. Shabaz, *Judge.*

ARGUED OCTOBER 29, 1986—DECIDED JANUARY 30, 1987

Before BAUER, *Chief Judge,* CUMMINGS and POSNER, *Circuit Judges.*

BAUER, *Chief Judge.* The primary question presented in this appeal is whether the doctrine of judicial immunity shields a state court judge from liability for damages for alleged deprivation of plaintiff's constitutional rights to post-conviction relief and effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments. Additionally, we consider whether the judge's clerk and court reporter are shielded from liability for damages arising out of their participation in an alleged scheme to alter the trial record. The district court granted defendants'

motion to dismiss on the basis of absolute judicial immunity which we now affirm.

I.

Plaintiff, Marguerite Eades, was the defendant in a criminal action pending before Judge Donald Sterlinske in the Circuit Court of Rusk County, Wisconsin. Eades was convicted of two counts of welfare fraud. Defendant Bradley Huff was the court reporter for the criminal proceedings. Defendant Julie Ewald was the judge's clerk.

After the trial, plaintiff retained different counsel. Eades' new attorney requested a trial transcript to file post-conviction motions. After the request for a transcript was made, Judge Sterlinske allegedly dictated a false certificate to Huff misrepresenting the occurrence of an instruction and special-verdict conference which was never held. Additionally, Sterlinske allegedly caused Huff to alter the trial transcript and caused Ewald to alter the docket sheet record to indicate that the false certificate was filed. Plaintiff also alleges that Judge Sterlinske wrote a letter to the Parole Board of the State of Wisconsin for the purpose of disuading it from granting Eades parole. Eades was unaware of Judge Sterlinske's actions until she received a letter from the Judicial Commission for the State of Wisconsin indicating that disciplinary proceedings had been commenced against Judge Sterlinske.

Plaintiff brought an action for damages against Judge Sterlinske, Bradley Huff, and Julie Ewald alleging deprivation of her Sixth and Fourteenth Amendment rights. The district court granted defendants' motions to dismiss on the basis of absolute judicial immunity and this appeal followed.

II.

Plaintiff argues that Judge Sterlinske caused defendants Huff and Ewald to alter the transcript and the record. Plaintiff argues that these actions do not constitute judicial

acts and that therefore the district court's dismissal on grounds of absolute judicial immunity was erroneous and should be reversed. In deciding whether the district court correctly ruled in Judge Sterlinske's favor, we must first consider the general principles underlying the immunity defense.

The Supreme Court first articulated the current doctrine in *Bradley v. Fisher*, 13 Wall. 335 (1872), holding that in order to safeguard principled and independent decision-making, a judge may not be held to answer in civil damages for those judicial acts committed in the exercise of his jurisdiction. *See also Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547 (1967). The defense does not simply shield judges from civil liability, but also from the related trial proceedings. *Mitchell v. Forsyth*, 469 U.S. 929 (1985). It will not, however, protect a judge from injunctive relief, *see Pulliam v. Allen*, 466 U.S. 522 (1984), or from criminal prosecution, *see O'Shea v. Littleton*, 414 U.S. 488 (1974). Judicial immunity is a creature solely of the common law.[1] However, although it had the constitutional authority to do so, Congress did not abrogate the defense in enacting § 1 of the Civil Rights Act of 1871, now codified at 42 U.S.C. § 1983. *See Pierson*, 386 U.S. at 554-55.

The Supreme Court in *Bradley* identified five considerations in support of judicial immunity. First, a judge must be free to make decisions without fear of personal consequences. Second, because litigation necessarily involves controversy and competing interests, losing parties may be quick to ascribe malevolent motives to a judge. Third, a qualified "good faith" immunity would be virtually worthless because of the ease of alleging bad faith. Fourth, the

[1] Thus, judicial immunity differs from the immunity afforded members of Congress, as the latter is guaranteed by the Speech or Debate Clause of Art. I, § 6 of the Constitution. *See Doe v. McMillan*, 412 U.S. 306 (1973). In addition, judicial immunity affords less protection than legislative immunity under the Speech or Debate Clause. *See Dennis v. Sparks*, 449 U.S. 24, 30 (1980).

prospect of defending civil damage actions would force judges to employ otherwise unnecessary meticulous record-keeping and would render judges less inclined to rule forthrightly. Finally, other safeguards, such as appeal and impeachment reduce the need for private rights of action for damages against judges. *See Bradley*, 80 U.S. 13 Wall. at 347-54.

We turn now to the facts of this case. The plaintiff argues that defendants violated her constitutional rights to have post-verdict motions heard upon a transcript and record not fraudulently altered. The critical inquiry is whether Judge Sterlinske's actions were judicial acts and thus shield him from liability for damages. The Supreme Court in *Stump* developed a two-part test to determine whether a judicial act was at issue: first, whether the conduct in question is the kind normally performed by a judge; second, whether the plaintiff was dealing with the judge in his judicial capacity. The answer to the first prong is already established. Judge Sterlinske presided over the plaintiff's criminal trial and post-trial proceedings and thus was performing the normal duties of a judge. Second, by virtue of her status as a defendant in criminal proceedings, Eades' relationship to the judicial system makes immunity appropriate in light of the concerns expressed in *Bradley*. *Forester v. White*, 792 F.2d 647 (1986). The plaintiff was dealing with the judge in an official capacity since the acts involved post-trial proceedings. Assuming, *arguendo*, that the allegations of the complaint are true, Judge Sterlinske's actions are still judicial acts based upon the rationale set forth in *Stump*. "This immunity applies even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Pierson*, 386 U.S. at 554. We therefore hold that Judge Sterlinske's conduct, albeit reprehensible, is cloaked with absolute judicial immunity.

III.

Eades argues that defendants Huff and Ewald are not shielded from liability for damages under the doctrine of

judicial immunity. Plaintiff's reliance on our decision in *Lowe v. Letsinger*, 772 F.2d 308 (1985) is misplaced. In *Lowe* we said that a court clerk enjoys absolute immunity where he is performing nonroutine, discretionary acts akin to those performed by judges. There we said that the clerk of the court was not entitled to quasi-judicial immunity for allegedly concealing the entry of an order. The duty to type and send notice after entry of judgment, the facts in *Lowe*, is a non-discretionary, ministerial task. Here, defendants Ewald and Huff prepared and filed a false certificate summarizing an instruction conference that allegedly was never held, and altered the docket to reflect that falsity. In so doing, defendants Huff and Ewald breached their duties, and in that process exercised discretion. As such, their duties had an integral relationship with the judicial process and are cloaked by the traditional doctrine of judicial immunity. *Dieu v. Norton*, 411 F.2d 761, 763 (1969) (court reporter and court clerk, acting in discharge of their official duties, were protected by doctrine of judicial immunity); *Briscoe v. La Hue*, 663 F.2d 713 (1981) (court reporters at criminal proceedings were immune from liability under doctrine of judicial immunity); *Henry v. Farmer City State Bank*, No. 86-1024, slip op. at 18 (7th Cir. Dec. 29, 1986) (court clerks entitled to judicial immunity if their official duties have an integral relationship with the judicial process).

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

A true Copy:

Teste:

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

MARGUERITE EADES,

Plaintiff,

v.

MEMORANDUM AND ORDER

DONALD J. STERLINSKE, BRADLEY W. HUFF, and JULIE EWALD,

85-C-824-S

Defendants.

This is a civil action in which plaintiff Marguerite Eades seeks to obtain monetary damages because of defendants' alleged § 1983 violations and civil conspiracy. Defendant Sterlinske moves to dismiss the action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Sterlinske contends that the plaintiff's complaint fails to state a claim on which relief can be granted

against him because (1) Sterlinske enjoys absolute judicial immunity from liability for damages; (2) the statute of limitations for this action has passed; and (3) the complaint fails to allege any deprivation of rights, privileges or immunities secured by the United States Constitution and laws.

In deciding a motion to dismiss, the factual allegations of the complaint are taken as true, with all factual inferences drawn in favor of plaintiff. Wolfolk v. Rivera, 729 F.2d 1114, 1116 (7th Cir. 1984). Therefore, taking the allegations of the first amended complaint as true, and for the sole purpose of deciding this motion, the Court finds the following facts:

FACTS

On or about June 16, 1980, plaintiff Eades was criminally charged with two counts of welfare fraud by the State of Wisconsin the Circuit Court for Rusk County. In October 1980, a jury trial was held regarding these two counts of welfare fraud. Defendant Sterlinske, who was the circuit court judge of Rusk County, presided throughout the course of the criminal proceedings against plaintiff. At no time during the course of the trial was a jury instruction and verdict conference held. At the conclusion of the trial plaintiff Eades was convicted.

After the trial, Eades' trial attorney was replaced as Eades' attorney in the criminal proceedings against her. Eades' new attorney requested a trial

transcript for purposes of filing post-conviction motions. After Eades' new attorney requested a transcript for purposes of filing post-conviction motions, Sterlinske called his court reporter into his office and dictated a "certificate" in which he made certain untrue representations as to what had occurred with respect to the instruction and verdict conference. Sterlinske directed his court reporter to indicate in the certificate that a full-fledged instruction and verdict conference had taken place in Sterlinske's chambers, even though such a conference had not in fact occurred. Sterlinske also directed his court reporter to date the certificate as of the date of the trial, even though this was not the date on which it was prepared and signed. Finally,

Sterlinske caused his court reporter to alter the trial transcript so that it would be consistent with the false certificate.

On some day after January 29, 1981, Sterlinske caused the certificate to be stamped by his court reporter with the Clerk of Court's filing stamp, indicating that it had been placed in the court file on October 23, 1980, the original trial date. On some day after January 29, 1981, Sterlinske caused his clerk to alter the docket sheet record to indicate that the certificate was filed on October 23, 1980, the original trial date, even though the certificate was filed on a much later date.

After Eades' new attorney placed Sterlinske on notice that he intended to challenge the jury instructions, the jury verdict, and the instruction and verdict

conference, Sterlinske, in a letter dated April 9, 1981, represented to the attorney that "the file in the matter indicates that there was a conference held between all of the attorneys, the instructions were gone over carefully, and they were approved by both the district attorney and Mrs. Eades' counsel at that time."

Eades' post-conviction motions were denied. In Sterlinske's decision denying Eades' post-conviction motions, Sterlinske falsely stated:

> Prior to the submission of the verdict and the charge to the jury, the clerk's minutes indicate that a conference was held in chambers, and the attorneys for the parties stipulated and agreed that the verdicts as submitted to the jury were approved by both and likewise there was no objection to any of the instructions as proposed by the Court. This was accomplished at 3:43 p.m.

> after the closing of the testimony of the parties.

The Clerk's minutes did not indicate any of what Sterlinske purported that they contained.

Sterlinske sentenced Eades to two years in prison. When Eades was in prison, Sterlinske wrote to the Parole Board for the State Department of Health and Social Services regarding Eades to dissuade the Board from granting Eades parole at her initial parole hearing. In his letter, Sterlinske stated:

> It has been my policy not to express any feelings one way or the other when I receive notices of the initial parole hearing. I would, however, be rather interested in being apprised of this inmate's present attitude as it relates to the circumstances surrounding these offenses. It is usually inconsistent to accept full responsibility and acknowledge improper con-

> duct for which an inmate may be incarcerated on one hand, and then proceed with alternate remedies in seeking an appeal which at least seems to indicate an unwillingness to accept or recognize and acknowledge improper conduct.

Eades' request for parole was denied at her initial parole hearing. Eades served nine months in prison. Eades was in prison from December 16, 1980 to approximately September 6, 1981.

Eades did not obtain knowledge of Sterlinske's actions until a short time after February 11, 1985, when she received a letter from an attorney for the Judicial Commission for the State of Wisconsin.

Plaintiff filed suit against Sterlinske, alleging in her first amended complaint that Sterlinske's actions, which were under color of state law, deprived her of her constitutional rights of liberty to

a fair trial and effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendment and her privileges and immunities as guaranteed by the Fourteenth Amendment. Plaintiff also alleges in her first amended complaint that the judge, the judge's clerk, and the court reporter conspired to deprive her of her constitutional rights.

OPINION

The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1343.

Sterlinske has moved to dismiss plaintiff's complaint because (1) he enjoys absolute judicial immunity from liability for damages; (2) the statute of limitations for the action has passed; and (3) the complaint fails to allege any deprivation of rights, privileges, or immunities secured

by the United States Constitution and laws. This Court will address the issue of judicial immunity first.

Judges are immune from liability for damages for acts committed within their judicial jurisdiction. Pierson v. Ray, 386 U.S. 547, 553-54 (1967). Judge Sterlinske did have jurisdiction over the criminal proceeding against the plaintiff. The issue is whether Judge Sterlinske's alleged actions were "judicial actions." The factors that determine whether an act by a judge is a "judicial act" relate to (1) whether the act or decision involves the exercising of discretion or judgment, or is rather a ministerial act which might as well have been committed to a private person as to a judge, ex parte Virginia, 100 U.S. 339, 348 (1879); (2) whether the act

is a function normally performed by a judge; and (3) the expectations of the parties, i.e., whether the parties dealt with the judge in his judicial capacity. Stump v. Sparkman, 435 U.S. 349, 362 (1978). This Court finds that Judge Sterlinske's actions were judicial acts, and that therefore, Sterlinske is immune from liability for damages caused by those actions.

First, Judge Sterlinske failed to hold a jury instruction and verdict conference. The preparation of jury instructions and a verdict is a function normally performed by a judge to the expectation of the parties involved. Although Sterlinske committed a procedural error by failing to hold a jury instruction and verdict conference, a judge does not lose his immunity

because the action he took was in error. Stump v. Sparkman, 435 U.S. at 359.

Next, Sterlinske ordered the court reporter to prepare a certificate that certified that a jury instruction and verdict conference was held, and to date the certificate as of the date of the trial. He ordered the court reporter to stamp the certificate as filed October 23, 1980, although the certificate was not filed until after January 29, 1981. He ordered his clerk to change the docket sheet to indicate that the certificate was filed on October 23 1980, and he ordered the court reporter to alter the trial transcript to indicate that the non-existent conference occurred.

The Seventh Circuit's decision in Lowe v. Letsinger, 772 F.2d 308 (1985)

requires that these actions be characterized as judicial acts. The decision indicates that the Seventh Circuit takes a broad view of what is considered a judicial function. In Lowe, a criminal defendant brought a civil rights action against a state trial judge, a court clerk, and an attorney general. Lowe alleged that the three defendants conspired to conceal the entry of judgment on his state post-conviction petition that vacated his conviction. The Seventh Circuit held that the clerk's duty to send notice after entry of judgment was a nondiscretionary ministerial task. Id. at 313. However, the Seventh Circuit also held that if the judge undertook to control the giving of notice of entry of judgment, then the judge was performing a judicial function rather than an administrative function. Id.

The Seventh Circuit warned:

> To label some part of the judicial process as administrative or ministerial and thereby encroach on the judicial defense of absolute immunity, as disturbing as the judicial conduct may be, cannot be permitted. The functioning of the system is more important than some particular and rare judicial misdeed which can be dealt with in other ways, by appellate processes, the ballot, or in the federal system, by impeachment or other sanctions, . . .
>
> We are not holding that everything a judge does is judicial and clothed with absolute immunity, for if it is truly nothing more than purely ministerial or administrative the judge will not be absolutely immune, . . .

Id.

Taking the Seventh Circuit's broad view of what is considered a judicial function, it is impossible to conclude that Sterlinske's actions were not judicial

functions. Sterlinske's preparation of a certificate that certified that a jury instruction and verdict conference was held was a judicial action because supplementing the record is a function normally performed by a judge to the expectations of the parties. Sterlinske's ordering the court reporter to stamp the certificate as filed October 23, 1980, was a judicial function because where the judge undertakes to control the stamping of documents it is a judicial function. Sterlinske's ordering his clerk to prepare the docket sheet to indicate that the certificate was filed on October 23, 1980, was a judicial function because where the judge undertakes to control the docketing of documents it is a judicial function. Sterlinske's ordering the court reporter to alter the trial tran-

script was also a judicial function because ordering a court reporter to supplement the record is a judicial function normally performed by a judge.

Sterlinske's remaining actions were also judicial actions. Sterlinske's written response to plaintiff's appellate counsel informing him that a jury instruction and verdict conference was held was a judicial act because responding to attorneys' letters concerning cases is a function normally taken by a judge to the expectations of the parties involved. Sterlinske's denial of plaintiff's post-conviction motions was a judicial action because deciding motions is at the heart of a judge's function and the involved parties' expectations. Finally, Sterlinske's letter to the Parole Board concerning

plaintiff's parole hearing was a judicial act. In his capacity as a judge, Sterlinske was provided notice of initial parole hearings and responding to these notices is a function a judge would normally perform.

The defendant Sterlinske performed judicial acts. The transcript and letter to counsel all manufactured and altered at Sterlinske's direction do not make the functions which he performed something other than judicial acts. Even though these acts were fraudulent, false, and disgusting, the doctrine of judicial immunity cannot be nullified.

> Courts in this country and England have embraced the doctrine of judicial immunity for centuries. The doctrine is designed to give a judge the freedom to act upon his convictions, without fear of personal consequences. And

> the doctrine applies even when the judge is accused of acting maliciously and corruptly. Should a judge err through inadvertence or otherwise, a party's remedy is through appellate processes. Congress has the constitutional authority to abolish the immunity defense to any cause of action it creates, but it chose not to do so when it passed section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, under which Lowe sues.

(Citations omitted.) Lowe, 772 F.2d at 311.

Although the actions taken by defendant Sterlinske were shocking, this Court is not able to conclude that his absolute immunity should be lost. It is well settled that a judge does not lose his immunity because the judicial actions which he performed were malicious or corrupt. Stump v. Sparkman, 435 U.S. at 356. The judicial system provides for removal from

office those who tarnish it by performance in a false, fraudulent, malicious or corrupt manner. This, of course, may be of little solace to the plaintiff, but the doctrine mandating a free and independent judiciary cannot be set aside because of those rare instances brought to the Court's attention, as egregious as they might be.

The plaintiff's first amended complaint does not state a cause of action against the defendant Sterlinske because he enjoys absolute immunity for the actions alleged in this complaint.

Because this Court holds that plaintiff's first amended complaint fails to state a claim against Sterlinske, it will not address the contentions that the statute of limitations for this action has passed or that the complaint fails to

allege any deprivation of rights, privileges or immunities secured by the United States Constitution and laws.

ORDER

IT IS ORDERED that plaintiff's complaint against defendant Sterlinske is DISMISSED, without costs.

Entered this 13th day of February, 1986.

BY THE COURT:

JOHN C. SHABAZ
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARGUERITE EADES,

Plaintiff,

CORRECTED ORDER

v.

85-C-824-S

DONALD J. STERLINSKE,
BRADLEY W. HUFF, and
JULIE EWALD,

Defendants.

The Court's memorandum and order of February 13, 1986 in the above entitled matter addressed itself to the plaintiff's first amended complaint,

Accordingly,

ORDER

IT IS ORDERED that plaintiff's first amended complaint against defendant Sterlinske is DISMISSED without costs.

IT IS FURTHER ORDERED that judgment shall not be entered upon this order at this time.

Entered this 19th day of February, 1986.

BY THE COURT:

JOHN C. SHABAZ
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARGUERITE EADES,

Plaintiff,

MEMORANDUM AND ORDER

v.

85-C-824-S

DONALD J. STERLINSKE,
BRADLEY W. HUFF, and
JULIE EWALD,

Defendants.

This is a civil action in which plaintiff Marguerite Eades seeks to obtain monetary damages because of defendants' alleged § 1983 violations. Defendants Huff and Ewald move to dismiss the action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. They contend that the plaintiff's complaint fails to state a claim on which relief can be granted against them because (1) they enjoy absolute judicial immunity or qualified

immunity from liability for damages; and (2) the statute of limitations for this action has passed. Huff further argues that the complaint fails to allege any deprivation of rights, privileges or immunities secured by the United States Constitution and laws, and that the complaint is actually against the State of Wisconsin and barred by the Eleventh Amendment.

In deciding a motion to dismiss, the factual allegations of the complaint are taken as true, with all factual inferences drawn in favor of plaintiff. Wolfolk v. Rivera, 729 F.2d 1114, 1116 (7th Cir. 1984). Therefore, taking the allegations of the first amended complaint as true, and for the sole purpose of deciding this motion, the Court finds the following facts:

FACTS

On or about June 16, 1980, plaintiff Eades was criminally charged with two counts of welfare fraud by the State of Wisconsin in the Circuit Court for Rusk County. In October 1980, a jury trial was held regarding these two counts of welfare fraud. Sterlinske, who was the Circuit Court Judge of Rusk County, presided throughout the course of the criminal proceedings against plaintiff. At no time during the trial was a jury instruction and verdict conference held. At the conclusion of the trial plaintiff Eades was convicted.

After the trial, Eades' trial attorney was substituted. Eades' new attorney requested a trial transcript for purposes of filing post-conviction motions. After Eades' new attorney

requested a transcript for purposes of filing post-conviction motions, Sterlinske called his court reporter, defendant Huff, into his office and dictated a "certificate" in which he made certain untrue representations as to what had occurred with respect to the instruction and verdict conference. Sterlinske directed defendant Huff to indicate in the certificate that a full-fledged instruction and verdict conference had taken place in Sterlinske's chambers, even though such a conference had not in fact occurred. Sterlinske also directed Huff to date the certificate as of the date of the trial, even though this was not the date on which it was prepared and signed. Finally, Sterlinske caused Huff to alter the trial transcript so that it would be consistent with the false certificate.

On some day after January 29, 1981, Sterlinske caused the certificate to be stamped by Huff with the Clerk of Court's filing stamp, indicating that it had been placed in the court file on October 23, 1980, the original trial date. On some day after January 29, 1981, Sterlinske caused his clerk, defendant Ewald, to alter the docket sheet record to indicate that the certificate was filed on October 23, 1980, the original trial date, even though the certificate was filed on a much later date.

Both defendants knew the certificate was false and knew that the stamping and insertion was done for the purpose of misleading others. Neither notified the parties to the criminal proceeding of the false certificate.

Plaintiff was sentenced to two years in prison, serving nine months. She was in prison from December 16, 1980 to approximately September 6, 1981.

Plaintiff did not obtain knowledge of defendants' actions until a short time after February 11, 1985, when she received a letter from an attorney for the Judicial Commission for the State of Wisconsin.

Plaintiff filed suit against defendants, alleging in her complaint that defendants' actions, which were under color of state law, deprived her of her constitutional rights of liberty to a fair trial and effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendment and her privileges and immunities as guaranteed by the Fourteenth Amendment.

OPINION

The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1343.

The Court will address the issue of immunity.

Judicial immunity protects a court reporter and circuit court clerk acting in the discharge of their official responsibilities. Dieu v. Norton, 411 F.2d 761, 763 (7th Cir. 1969); Briscoe v. LaHue, 663 F.2d 713, 722 (7th Cir. 1981). This Court believes that the defendants Huff and Ewald acted in the discharge of their official responsibilities as court reporter and court clerk, respectively, and therefore are entitled to judicial immunity.

Huff, at the judge's direction, prepared a certificate and made the trial transcript consistent with the certifi-

cate. Huff also, at the judge's direction, stamped the certificate with the Clerk of Court's filing stamp. These actions, taken at the judge's direction, are not outside the scope of a court reporter's official responsibilities. Accordingly, Huff's actions are protected by judicial immunity.

Ewald, at the Judge's direction, amended the docket sheet record to indicate that the certificate was filed on October 23, 1980. These actions, taken at the Judge's direction, are not outside the scope of a circuit court clerk's official responsibilities. Accordingly, Ewald's actions are protected by judicial immunity.

The decision in Lowe v. Letsinger, 772 F.2d 208 (7th Cir. 1985), concerning the court clerk is inconsistent with the Seventh Circuit's prior holding in

Dieu. Dieu holds that a court clerk or court reporter is entitled to judicial immunity as long as he or she is acting in the discharge of his or her official responsibilities, regardless of whether those responsibilities are discretionary or ministerial. Under Dieu, as stated above, court reporter Huff and clerk Ewald would be entitled to judicial immunity. Lowe, on the other hand, holds that they are entitled to judicial immunity only if "[they are] performing nonroutine, discretionary acts akin to those performed by judges."[1] If the court clerk and reporter

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[1] This Court is somewhat confused by the Lowe court's definition of a ministerial versus a discretionary act. The court seems to say that if a judge mails a notice of entry of an order, that mailing is a discretionary act. However, the court also seems to say that if a clerk mails the same notice it is a ministerial act. If a clerk is entitled to judicial cont'd.

are performing ministerial acts, they are not entitled to judicial immunity but may be entitled to qualified immunity. Under Lowe, court reporter Huff and clerk Ewald most likely would not be entitled to judicial immunity, but might be entitled to qualified immunity.

Given the different results of Dieu and Lowe, this Court must determine which case is controlling. The Seventh Circuit's decision in Dieu is still controlling for several reasons. First, the court in Lowe did not specifically overrule Dieu. Second, the court in Lowe did not even discuss and distinguish Dieu in its opinion. Third, the court in Lowe stated

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immunity when he performs acts akin to a judge, should not the clerk be given judicial immunity for mailing a notice if a judge would have been given judicial immunity for mailing the same notice?

that "for some reason the clerk unfortunately dropped from sight on appeal, filed no briefs, and was not represented at oral argument." Lowe, 772 F.2d at 313 n. 6. Therefore, the court in Lowe may not have had the opportunity to fully examine the Seventh Circuit's opinion in Dieu. For these reasons, this Court believes the Seventh Circuit's decision in Dieu is still controlling.

Under Dieu, the actions of defendants Huff and Ewald are protected by judicial immunity.

Although there may be those of us not sophisticated enough to comprehend the distinction, nonetheless it appears Draconian to this Court to provide absolute immunity to the trial judge, and rightfully so in order to maintain a truly independent

judiciary, and yet to hold his staff, clerk and reporter, liable for those very actions for which absolute judicial immunity has been previously provided.

Defendants' motions to dismiss on the basis of absolute immunity are granted. The Court need not address the other three grounds for dismissal. The Court does question, however, whether defendants' actions deprived plaintiff of any rights, privileges or immunities secured by the United States Constitution and Laws.

ORDER

IT IS ORDERED that defendant Huff's motion to dismiss the complaint against him is GRANTED.

IT IS FURTHER ORDERED that defendant Ewald's motion to dismiss the complaint against her is GRANTED.

Entered this 30th day of April, 1986.

BY THE COURT:

JOHN C. SHABAZ
District Judge

JUDGMENT IN A CIVIL CASE
United States District Court
Western District of Wisconsin

Marguerite Eades,
Plaintiff,

Docket Number 85-C-824-S

v.

Judge John C. Shabaz

Donald Sterlinske, Bradley J. Huff and Julie Ewald,
Defendants.

_____ **Jury Verdict.** This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

__X__ **Decision by Court.** This action came on for consideration before the Court with the judge named above presiding. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

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that the motions to dismiss filed by the defendants are granted, and judgment is entered against the plaintiff dismissing her case.

Joseph W. Skupniewitz, Clerk

May 1, 1986

(By) Deputy Clerk
/s/, Warren H. Nelson, Chief Deputy